



TOWN COUNCIL – AGENDA REQUEST FORM

THIS FORM WILL BECOME PART OF THE BACKGROUND INFORMATION USED BY THE COUNCIL AND PUBLIC

Please submit Agenda Request Form, **including back up information**, 8 days prior to the requested meeting date. **Public Hearing requests must be submitted 20 days prior to requested meeting date to meet publication deadlines** (exceptions may be authorized by the Town Manager, Chairman/Vice Chair).

MEETING INFORMATION

Date Submitted: May 27, 2015

Date of Meeting: May 28, 2015

Submitted by: Town Council Chair Nancy Harrington
and Vice Chair Tom Mahon

Department:

Time Required: 10 minutes

Speakers: Town Council Chair Nancy Harrington and
Vice Chair Tom Mahon

Background Info.

Supplied:

Yes: ☒ No: ☐

CATEGORY OF BUSINESS (PLEASE PLACE AN "X" IN THE APPROPRIATE BOX)

Appointment: ☐

Recognition/Resignation/

Retirement: ☐

Public Hearing: ☐

Old Business: ☐

New Business: ☒

Consent Agenda: ☐

Nonpublic: ☐

Other: ☐

TITLE OF ITEM

Town Manager's Contract

DESCRIPTION OF ITEM

The Town Council to consider amendments to the Town Manager's current contract.

REFERENCE (IF KNOWN)

RSA:

Warrant Article: _____

Charter Article: _____

Town Meeting: _____

Other: _____

N/A

EQUIPMENT REQUIRED (PLEASE PLACE AN "X" IN THE APPROPRIATE BOX)

Projector: ☐

Grant Requirements: ☐

Easel: ☐

Joint Meeting: ☐

Special Seating: ☐

Other: ☐

Laptop: ☐

None: ☐

CONTACT INFORMATION

Name: Nancy Harrington

Address

6 Baboosic Lake Road

Phone Number

Email Address

nharrington@merrimacknh.gov

APPROVAL

Town Manager:

Yes ☐ No: ☐

Chair/Vice Chair:

Yes ☒ No: ☐

Hold for Meeting Date: _____

**Employment Agreement
Between
Town of Merrimack and Eileen Cabanel.**

This agreement made and entered into the _____ day of _____, 2015, by and between the Town of Merrimack, New Hampshire, a municipal corporation, (hereinafter called "Employer/Town Council") and Eileen Cabanel (hereinafter called "Employee/Town Manager") accepts the following terms and conditions other employment as set forth below.

Introduction

The chief administrative officer of the Town shall be the Town Manager. The Town Council shall appoint a person especially qualified by experience and training, who receives the votes of at least five (5) members of the Town Council, to be Town Manager. The Town Manager shall serve at the pleasure of the Town Council with no fixed term of office. The Town Council shall fix the Town Manager's salary and benefits and other terms of employment.

The Town Manager shall be appointed solely on the basis of qualification for the office, with special reference to education, training and previous experience in public or private office. The Town Manager shall devote full time to the office and shall not hold any other public office, elective or appointive, except as specifically authorized by the Town of Merrimack Charter, nor engage in any other business or occupation without the express written approval of the Town Council.

Section 1: Term

This agreement shall become effective June 1, 2015 and remain in full force until terminated by the Town Council or Town Manager as provided in this agreement.

Section 2: Duties and Authority

The Town Council agrees to employ Eileen Cabanel as the Town of Merrimack's Town Manager to perform the functions and duties specified in RSA Chapter 37 and other applicable New Hampshire State Statutes, the Town of Merrimack Charter, and in compliance with the policies and regulations of the Town Council of the Town of Merrimack and the Ordinances of the Town, and to perform other legally permissible and proper duties and functions as the Town Council from time to time assign.

Section 3: Oath and Bond

Before entering upon the duties of office, the Town Manager shall be sworn to the faithful and impartial performance thereof, and a certificate to that effect shall be filed with the Town Clerk; and the Town Manager shall execute a bond in favor of the Town for the faithful performance of the Town Manager's duties in such sum and with such surety or sureties as may be approved by the Town Council. The Town shall bear the full cost of any fidelity or other bonds required of the Town Manager.

Section 4: Compensation

The Town Council agrees to pay the Town Manager an annual base salary of \$129,876.80 payable in installments at the same time that the other non-union employees of the Town are paid. Payments are subject to such deductions as may be authorized by the Town Manager or as may be required by law. In addition, the Town agrees to increase the above referenced base salary on

the basis of a merit pay system and in such amounts and to such extent as the Town Council shall determine just and equitable.

Section 5: Hours of Work

It is recognized that the Town Manager must devote a great deal of time outside the normal office hours on business for the Town, and to that end, the Town Manager shall be expected to devote the time necessary to accomplish her duties and goals, and as a salaried employee, shall receive no additional compensation other than specified in Section 4.

Section 6: Medical. Dental. Life and Disability Insurance

The Town Manager shall be entitled, on the same terms and conditions, to medical, dental, life, and disability insurance that is provided to all other non-union Town employees.

Section 7: Vacation. Holidays. Sick and Personal Leave

The Town Manager shall be entitled to five weeks of annual vacation leave (accrual of 3.85 hours per week) and 10 days of annual sick leave (accrual of 1.54 hours per week). In addition, the Town Manager will be annually credited with two (2) personal days and (1) floating holiday. The Town Manager shall also be entitled to such holidays, compensation for any unused vacation and sick leave accruals upon separation, and carry over leave accruals, in accordance with the Town's personnel policies covering non-union employees.

Section 8: Retirement

The Town Council agrees to enroll the Town Manager into an ICMA Retirement Plan or the New Hampshire Retirement System Plan. The Town Council agrees to make the required Town contribution. The Town contribution shall not exceed the amount entitled to all other non-union Town employees. If required by the retirement plan, the Town Manager agrees to make the necessary employee contribution to said retirement plan.

Section 9: General Business Expenses

The Town Council agrees to budget for and to pay for expenses necessary and desirable for the Town Manager's professional participation, development, growth, and advancement, and for the good of the Town.

Section 10: Evaluation of Manager's Performance

The Town Council shall conduct an evaluation of the Town Manager's performance in office every six (6) months. After such evaluation, the Town Council shall determine whether the Town Manager's overall performance in office has been satisfactory or unsatisfactory.

Section 11: Notice Upon Resignation

In the event that the Employee resigns her position with the Employer, the Employee shall provide a minimum of 90 days notice, exclusive of vacation, unless the parties agree otherwise.

Section 12: Reprimand and Removal From Office

A. Reprimand

The Town Manager may be reprimanded by a vote of five (5) members of the Town Council. The Town Council shall adopt a resolution of reprimand stating the reasons therefore and any sanctions to be imposed, which shall be served on the Town Manager. Immediately upon delivery to the Town Manager

of said resolution of reprimand, the Town Manager may be relieved of office and/or such duties as the Town Council may determine. If relieved by the Town Council, the Town Manager shall continue to receive full salary and benefits until the effective date of a final resolution of reprimand. If a final resolution of reprimand is not adopted, the Town Manager shall resume office forthwith.

B. Removal

Notwithstanding anything herein to the contrary, the Town Manager may be removed from office by a vote of five (5) members of the Town Council, with or without cause. The Town Council shall adopt a resolution for removal stating the reasons therefore, which shall be served on the Town Manager.

Immediately upon delivery to the Town Manager of said resolution for removal, the Town Manager shall be relieved of office and all further duties. The Town Manager shall continue to receive full salary and benefits until the effective date of a final resolution for removal. If a final resolution for removal is not adopted, the Town Manager shall resume office forthwith.

C. Removal or Reprimand with Cause

The Town Manager may reply in writing to any resolution of reprimand or for removal within ten (10) days of receipt. Unless otherwise provided for herein, upon request of the Town Manager, he or she shall be afforded a hearing, either public or private in accordance with the provisions of New Hampshire State Law. The hearing shall occur not earlier than ten (10) days and not later than fifteen (15) days after such hearing is requested. After the hearing, if one is requested, and after full consideration, the Town Council, by a vote of five (5) members, may adopt a final resolution of reprimand or for removal within seven (7) days. The action of the Town Council in reprimanding or removing the Town Manager shall be final.

It is expressly agreed that the Town Manager shall not be entitled to any liquidated damages, included payment for any accrued sick or personal time, if the Town Manager is removed for cause. For the purposes of this agreement, the term "cause" is defined to include, but is not be limited to, malfeasance, nonfeasance, criminal misconduct, gross negligence, insubordination, sexual misconduct/harassment, theft, fraud or other acts of dishonesty.

D. Removal Without Cause - Liquidated Damages

Notwithstanding the foregoing, the Town Council may elect to remove the Town Manager without cause and shall pay the Town Manager liquidated damages, inclusive of all accrued vacation, sick and personal leave as set forth below.

Upon tender of said liquidated damages, the Town Manager agrees to irrevocably resign forthwith. Under such circumstances, the parties agree to waive the 90 days notice provision provided for in Section 12, and the resignation shall become effective upon receipt (without further action of the Council). The parties further agree that upon receipt of the Town Manager's resignation, the resolution for removal shall be immediately withdrawn and the allegations supporting the reasons for removal shall be considered unfounded. The parties acknowledge that the payment of liquidated damages shall compensate the Town Manager for any and all damages arising out of, or in anyway associated with, her employment and/or her separation there from, including, but not limited to, any claim of unpaid wages.

Given the difficulty of calculating the exact damages that might be occasioned by a removal without cause, and unless otherwise mutually agreed to by the parties, liquidated damages for such removal are stipulated as follows:

First Year of Employment:	3 months of salary
Second Year of Employment:	4 months of salary
Third Year of Employment:	5 months of salary
Fourth Year and Thereafter:	6 months of salary

Section 13: Amendment or Termination of Agreement

Notwithstanding the foregoing, the parties agree that this contract may be amended or terminated by mutual written agreement on such terms and conditions as circumstances may warrant.

Section 14: Death of Town Manager

This employment agreement and all obligations to the Town Manager shall terminate upon the death of the Town Manager.

Section 15: Indemnification

Beyond that required under Federal, State or Local Law, the Town Council shall defend, save harmless and indemnify the Town Manager against any tort, professional liability claim or demand or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of the Town Manager's duties as Town Manager or resulting from the exercise of judgment or discretion in connection with the performance of program duties or responsibilities, unless the act or omission involved willful or wanton conduct. The Town Manager may request and the Town Council shall not unreasonably refuse to provide independent legal representation at the Town's expense and the Town Council may not unreasonably withhold approval. Legal representation, provided by the Town for the Town Manager, shall extend until a final determination of the legal action including any appeals brought by either party. The Town shall indemnify the Town Manager against any and all losses, damages, judgments, interest, settlements, fines, court costs, and other reasonable costs and expenses of legal proceedings including attorneys fees, and any other liabilities incurred by, imposed upon, or suffered by such Town Manager in connection with or resulting from any claim, action, suit, or proceeding, actual or threatened, arising out of or in connection with the performance of her duties. Any settlement of any claim must be made with prior approval of the Town Council in order for indemnification, as provided in this Section, to be available.

The Town Manager recognizes that the Town Council shall have the right to compromise and unless the Town Manager is a party to the suit which the Town Manager shall have a veto authority over the settlement, settle any claim or suit; unless, said compromise or settlement is of a personal nature to the Town Manager. Further, the Town agrees to pay all reasonable litigation expenses of the Town Manager throughout the pendency of any litigation to which the Town Manager is a party, witness or advisor to the Town. Such expense payments shall continue beyond the Town Manager's service to the Town as long as litigation is pending. Further, the Town Council agrees to pay the Town Manager reasonable consulting fees and travel expenses when the Town Manager serves as a witness, advisor or consultant to the Town (after the employment relationship has been terminated) regarding pending litigation.

Section 16: Other Terms and Conditions of Employment

The Town Council, only upon agreement with the Town Manager, shall fix any such other terms and conditions of employment, as it may determine from time to time, relating to the performance of the

Town Manager, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement, the Town of Merrimack Charter or any other law. This agreement supersedes and replaces the agreement effective on October 10, 2013. Nothing herein shall be construed to prevent the revision of this contract by the mutual agreement of the Town Manager and Town Council.

Town of Merrimack ("Employer/Town Council")

Town Manager ("Employee")
